

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF

FACEBOOK, INC.

SALES AND USE TAX

REFUSAL TO ISSUE
DECLARATORY ORDER

DOCKET NO. 2019-300-2-0747

Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Facebook, Inc. (“Petitioner”) on November 22, 2019, and in accordance with Iowa Code section 17A.9 and Iowa Administrative Code rule 701—7.24(17A), the Director issues the following ruling.

I. FACTS

The findings of fact are based on the Petition.

Petitioner is an owner and operator of data center business (“DCB”), for which it did not disclose a name. DCB is a limited liability company (“LLC”) that operates a data center business. Petitioner states that DCB meets all of the requirements for the sales tax exemption under Iowa Code section 423.3(95). While DCB currently purchases all of the equipment needed for its business directly from third-party vendors, Petitioner is considering setting up a wholly owned subsidiary, ProCo, for which it did not disclose a name, to purchase and sell the needed equipment to DCB. ProCo is a recognized LLC and would also sell to other related entities. Both DCB and ProCo are separate legal entities and are wholly owned subsidiaries of Facebook, Inc. Petitioner states that DCB will purchase most of its equipment from ProCo, but ProCo does not exercise control over DCB regarding the purchases DCB makes from ProCo. According to Petitioner,

ProCo is not DCB's purchasing agent (i.e., ProCo is not authorized by DCB to act for or in place of DCB with respect to the equipment ProCo purchases from third-party vendors).

Petitioner states that DCB will purchase qualified computers and equipment in the following manner:

1. DCB will issue properly completed, timely exemption certificates to ProCo for DCB's purchases of qualified computers and equipment from ProCo;
2. Without direction from ProCo, DCB will issue purchase orders (or digital equivalents) to ProCo for qualified property;
3. ProCo will place orders with third-party vendors and issue resale certificates issued in ProCo's own name;
4. The third-party vendors will bill ProCo and ProCo will pay the vendors directly;
5. To the extent ProCo fails to pay, the third-party vendors have no recourse against DCB;
6. The third-party vendor will sell and transfer title to ProCo (and the vendors' invoices will so reflect this);
7. It is anticipated that ProCo will sell items to DCB at cost. There is not expected to be a markup from the price paid by ProCo;
8. ProCo will make appropriate bookkeeping entries for account payables due from DCB for sales of property to DCB;
9. These bookkeeping entries (and all related record) have economic substance, and payment is reflected from DCB to ProCo in the affiliated companies' books and records;
10. DCB will use the qualified computers and equipment in a manner consistent with the requirements of Iowa Code section 423.3(95); and
11. To the extent there is a sale of taxable equipment or supplies, ProCo will include tax on the invoice to DCB and will report the tax in its return.

Pet. For Declaratory Order at 2, No. 2019-33-2-0747 (Nov. 22, 2019).

II. ISSUES

Petitioner presents the following issues for resolution:

1. Under the facts described in the Petition, may ProCo issue valid resale certificates to third-party vendors when purchasing qualified computers and equipment for resale to DCB?
2. May DCB issue a valid data center exemption certificate to ProCo for DCB's purchases of qualified computers and equipment from ProCo?

3. If the Department finds that DCB and ProCo are a unit under Iowa Administrative Code rule 701—213.24(2), may the unit issue valid data center exemption certificates to third-party vendors and, if so, which legal entity is authorized to do so (i.e., DCB, ProCo, or both)?

III. STANDARD OF REVIEW

The purpose of a declaratory order is to provide a “generally available means for persons to obtain reliable information about agency administered law as it applies to their particular circumstances.” *Sierra Club Iowa Chapter v. Iowa Dep’t of Transp.*, 832 N.W.2d 636, 647 (2013) (citing Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, 1-8 (1998)). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. *See* Iowa Admin. Code r. 701—7.41(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.24(17A) concerning the issuance of declaratory orders.

IV. RULING

“An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted” by the Department in accordance with Iowa Code section 17A.9, subsection (2).

Iowa Code § 17A.9(1)(b)(1). Under Iowa Administrative Code rule 701—7.24(9)“a”, the Department may refuse to issue a Declaratory Order for several reasons, including the following:

- (1) The petition does not substantially comply with the required form;
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(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

Here, the Department refuses to issue an order on the issues presented because rulemaking is a more proper proceeding to resolve the issues presented in the Petition. The issues identified in the Petition require the Department to analyze whether DCB and ProCo are “affiliated corporations acting as a unit” under rule 701—213.24 subrules (1) and (2). In reviewing the relevant statutes and rules as they relate to the Petition, the Department has determined that the language of the rule should be revisited given the Streamlined legislative changes required by the State of Iowa’s participation in the Streamlined Sales and Use Tax Agreement.

Even if the Petition was not better addressed through rulemaking, the Department would refuse to issue a ruling because “[t]he petition does not substantially comply with the required form.” Iowa Admin. Code r. 701—7.24(9)“a”(1). Specifically, the Department’s rules require petitioners to provide “[t]he names and addresses of other persons, or a description of any class of persons, *known by petitioner to be affected by, or interested in*, the questions presented in the petition.” Iowa Admin. Code r. 701—7.24(1)“b”(7) (2019) (emphasis added). The Petition does not name or provide addresses or other identifiable information for either DCB or ProCo, two LLCs that will be affected by, or have an interest in, the issues presented in the Petition. Absent this information, the Director is unable to respond to the issues raised in the Petition.

ORDER

THEREFORE, based on the facts, foregoing reasoning, and applicable provisions of the law, the Petition for Declaratory Order is denied. Rulemaking is a more appropriate procedure and the Petition fails to comply with the required form.

Done at Des Moines, Iowa on this 12th day of March, 2020.

IOWA DEPARTMENT OF REVENUE


BY


Craig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 2020, I caused a true and correct copy of the Refusal to Issue Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail or delivered to the following person:

Mark Stefan
EY San Jose Office
303 S. Almaden Blvd. #1000
San Jose, CA 95110


Hollie Welch, Executive Secretary
Iowa Department of Revenue